

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

HOWMEDICA OSTEONICS CORP,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	
	)	
ZIMMER, INC., CENTERPULSE	)	
ORTHOPEDICS, INC. (formerly known	)	
as SULZER ORTHOPEDICS, INC.)	)	
	)	
<i>Defendants.</i>	)	
	)	

CASE NO. 05-CV-897-WHW-CLW

**DECLARATION OF BRYAN C. RUTSCH**

I, Bryan C. Rutsch, declare as follows:

1. I am a member of the state bars of Illinois and Wisconsin, and have been admitted *pro hac vice* in the District of New Jersey. I work at the law firm of Kirkland & Ellis LLP, Chicago office, and represent Zimmer, Inc. and Centerpulse Orthopedics (“Zimmer”) in the above-styled case. I have personal knowledge of the facts stated in this Declaration.
2. Attached hereto as Exhibit 1 is a true and accurate copy of U.S. Patent No. 6,174,934 with an issue date of January 16, 2001.
3. Attached hereto as Exhibit 2 is a true and accurate copy of U.S. Patent No. 6,372,814, with an issue date April 16, 2002.
4. Attached hereto as Exhibit 3 is a true and accurate copy of U.S. Patent No. 6,664,308, with an issue date of December 16, 2003.

5. Attached hereto as Exhibit 4 is a true and accurate copy of U.S. Patent No. 6,818,020, with an issue date of November 16, 2004.
6. Attached here to as Exhibit 5 is a true and accurate copy of the Order Granting Reexamination Request of U.S. Patent No. 6,818,020 from the United States Patent and Trademark Office (“PTO”) dated April 9, 2009.
7. Attached here to as Exhibit 6 is a true and accurate copy of the initial Office Action in the Reexamination of U.S. Patent No. 6,818,020 from the United States Patent and Trademark Office (“PTO”) dated April 9, 2009.
8. Attached here to as Exhibit 7 is a true and accurate copy of the April 30, 2014 decision of the Patent Trial and Appeal Board in the reexamination of U.S. Patent No. 6,818,020.
9. Attached here to as Exhibit 8 is a true and accurate copy of the December 12, 2014 rehearing decision of the Patent Trial and Appeal Board in the reexamination of U.S. Patent No. 6,818,020.
10. Attached here to as Exhibit 9 is a true and accurate copy of selected pages from the book chapter entitled “Radiation Resistance of Polymers and Composites” authored by Roger L. Clough and Kenneth T. Gillen.
11. Attached here to as Exhibit 10 is a true and accurate copy of the 1989 article “Investigation on Sterilization and Modification of High Molecular Weight Polyethylenes by Ionizing Irradiation” by Robert M. Streicher.

12. Attached here to as Exhibit 11 is a true and accurate copy of the January 16, 2009 Declaration of Roger L. Clough submitted in the Reexamination of U.S. Patent No. 6,818,020.
13. Attached here to as Exhibit 12 is a true and accurate copy of the January 1, 2011 Declaration of Roger L. Clough submitted in the Reexamination of U.S. Patent No. 6,818,020.
14. Attached here to as Exhibit 13 is a true and accurate copy of Docket No. 46-9, which is the Declaration of Dr. Stephen Li, Ph.D, in support of Plaintiff Howmedica's Opening Claim Construction Brief and is dated January 19, 2006.
15. Attached here to as Exhibit 14 is a true and accurate copy of the 1979 article entitled "Crystallinity and Crosslinking Efficiency in the Irradiation of Polyethylene" authored by Malcolm Dole, C Gupta and N. Gvozdic.
16. Attached here to as Exhibit 15 is a true and accurate copy of the July 9, 2009 Declaration of Roger Clough submitted in the Reexamination of U.S. Patent No. 6,818,020.
17. Attached here to as Exhibit 16 is a true and accurate copy of selected pages from the 1979 Abstract of Thesis entitled "Effects of Gamma Irradiation and Post Heat-Treatments on the Structure and Mechanical Properties of Ultra High Molecular Weight Polyethylene (UHMW-PE)" authored by Ching-Tai Lue.
18. Attached here to as Exhibit 17 is a true and accurate copy of selected pages from the June 15, 1999 Response to the First Office Action in the prosecution history of U.S. Patent No. 6,174,934.

19. Attached here to as Exhibit 18 is a true and accurate copy of selected pages from the July 27, 1999 Office Action in the prosecution history of U.S. Patent No. 6,174,934.
20. Attached here to as Exhibit 19 is a true and accurate copy of Bates Nos. HOW 093607-HOW 093609, which is an Interoffice Memorandum from Ash Chopra to Aiguo Wang dated October 29, 1999. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
21. Attached here to as Exhibit 20 is a true and accurate copy of Bates No. HOW 071082, Duration/Swell Ratio Project Data. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
22. Attached here to as Exhibit 21 is a true and accurate copy of Bates No. HOW 071081, Swell Ratio Data, dated November 1999. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
23. Attached here to as Exhibit 22 is a true and accurate copy of selected pages from the May 24, 2006 deposition of Aiguo Wang. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
24. Attached here to as Exhibit 23 is a true and accurate copy of the December 7, 1999 affidavit of Aiguo Wang submitted in the prosecution history of U.S. Patent No. 6,174,934.
25. Attached here to as Exhibit 24 is a true and accurate copy of the December 9, 1999 Response to the Second Office Action submitted in the prosecution history of U.S. Patent No. 6,174,934.

26. Attached here to as Exhibit 25 is a true and accurate copy of the February 15, 2000 Office Action submitted in the prosecution history of U.S. Patent No. 6,174,934.
27. Attached here to as Exhibit 26 is a true and accurate copy of the March 22, 2000 affidavit of Aiguo Wang submitted in the prosecution history of U.S. Patent No. 6,174,934.
28. Attached here to as Exhibit 27 is a true and accurate copy of the May 18, 2001 Amendment submitted in the prosecution history of U.S. Patent No. 6,372,814.
29. Attached here to as Exhibit 28 is a true and accurate copy of the October 4, 2001 Notice of Allowance submitted in the prosecution history of U.S. Patent No. 6,372,814.
30. Attached here to as Exhibit 29 is a true and accurate copy of the August 16, 2007 Expert Report of Professor Lee-Jen Wei, Ph.D. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
31. Attached here to as Exhibit 30 is a true and accurate copy of a letters exchanged between David Callahan and Gregory Vogler between the dates of June 30, 2009 and July 8, 2009.
32. Attached here to as Exhibit 31 is a true and accurate copy of selected pages containing the initial claims in the prosecution history of U.S. Patent No. 6,818,020.
33. Attached here to as Exhibit 32 is a true and accurate copy of the November 15, 2003 Office Action in the prosecution of U.S. Patent No. 6,818,020.
34. Attached here to as Exhibit 33 is a true and accurate copy of the May 19, 2004 Amendment in the prosecution history of U.S. Patent No. 6,818,020.

35. Attached here to as Exhibit 34 is a true and accurate copy of the May 11, 2004 Affidavit of Aiguo Wang submitted in the prosecution history of U.S. Patent No. 6,818,020.
36. Attached here to as Exhibit 35 is a true and accurate copy of the July 20, 2004 Notice of Allowability in the prosecution history of U.S. Patent No. 6,818,020.
37. Attached here to as Exhibit 36 is a true and accurate copy of a January 12, 1993 letter to Dr. D.C. Sun from Jordi Associates, Inc. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
38. Attached here to as Exhibit 37 is a true and accurate copy of the 1996 article entitled “Development of Stabilized UHMWPE Implants with Improved Oxidation Resistance via Crosslinking” authored by D.C. Sun, Aiguo Wang, Casper Stark, and J.H. Dumbleton.
39. Attached here to as Exhibit 38 is a true and accurate copy of the 1996 article entitled “Effects of Sterilization Methods on the Wear of Ultra-high Molecular Weight Polyethylene Acetabular Cups” authored by Aiguo Wang, D.C. Sun, Casper Stark, and J.H. Dumbleton.
40. Attached here to as Exhibit 39 is a true and accurate copy of the 1996 article entitled “Effects of Sterilization Methods on the Wear of Ultra-high Molecular Weight Polyethylene Acetabular Cups” authored by Aiguo Wang, D.C. Sun, Casper Stark, and J.H. Dumbleton.
41. Attached here to as Exhibit 40 is a true and accurate copy of the December 9, 1999 Terminal Disclaimer submitted in the prosecution history of U.S. Patent No. 6,174,934.

42. Attached here to as Exhibit 41 is a true and accurate copy of selected pages from the May 25, 2006 deposition of Raymond Augustin. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
43. Attached here to as Exhibit 42 is a true and accurate copy of the original claims submitted in the prosecution history of U.S. Patent No. 6,174,934.
44. Attached here to as Exhibit 43 is a true and accurate copy of selected pages from the October 14, 2005 deposition of Aaron Essner. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
45. Attached here to as Exhibit 44 is a true and accurate copy of the May 10, 2006 Letter from Imron Aly to Patricia McGrath with the attached Lue invalidity claim chart.
46. Attached here to as Exhibit 45 is a true and accurate copy of the June 12, 2006 Letter from David Callahan to Timothy Malloy and Gregory Vogler.
47. Attached here to as Exhibit 46 is a true and accurate copy of the July 5, 2006 Letter from Gregory Vogler to David Callahan. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
48. Attached here to as Exhibit 47 is a true and accurate copy of the August 24, 2006 Declaration of Dr. Stephen Li, Ph.D. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
49. Attached here to as Exhibit 48 is a true and accurate copy of selected pages from the August 20, 2007 Expert Report of Susan P. James, Ph.D. This exhibit has been

designated as containing Confidential Information under the Stipulated Protective Order in this case.

50. Attached here to as Exhibit 49 is a true and accurate copy of the selected pages from the Rebuttal Expert Witness Report of Stephen Li, Ph.D on the Validity of Howmedica's '020 Patent. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
51. Attached here to as Exhibit 50 is a true and accurate copy of the selected pages from the Expert Witness Rebuttal Report of Lisa A. Pruitt, Ph.D. to the Expert Reports of Drs. Clough and James. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case
52. Attached here to as Exhibit 51 is a true and accurate copy of the April 1, 2008 Second Supplemental Expert Report of Susan P. James, Ph.D. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
53. Attached here to as Exhibit 52 is a true and accurate copy of selected pages from the January 14, 2008 deposition of Lisa Pruitt.
54. Attached here to as Exhibit 53 is a true and accurate copy of selected pages from the Supplemental Expert Witness Report of Stephen Li, Ph.D. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.



55. Attached here to as Exhibit 54 is a true and accurate copy of selected pages from the Second Supplemental Report of Lisa A. Pruitt, Ph.D. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
56. Attached here to as Exhibit 55 is a true and accurate copy of selected pages form the June 9, 2009 Declaration of Dr. Stephen Li, Ph.D submitted in the Reexamination of U.S. Patent No. 6,818,020.
57. Attached here to as Exhibit 56 is a true and accurate copy of selected pages form the June 9, 2009 Declaration of Dr. Lisa Pruitt, Ph.D submitted in the Reexamination of U.S. Patent No. 6,818,020.
58. Attached here to as Exhibit 57 is a true and accurate copy of the December 6, 2010 Declaration of Robert M. Streicher submitted in the Reexamination of U.S. Patent No. 6,818,020.
59. Attached here to as Exhibit 58 is a true and accurate copy of selected pages from the Action Closing Prosecution in the Reexamination of U.S. Patent No. 6,818,020.
60. Attached here to as Exhibit 59 is a true and accurate copy of the September 29, 1995 Declaration of D.C. Sun submitted in the prosecution history of U.S. Patent No. 5,543,471.
61. Attached here to as Exhibit 60 is a true and accurate copy of the August 8, 1995 letter from D.C. Sun to Patricia Chawke and Dr. Birkinshaw, bearing Bates No. HOW 024942. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.

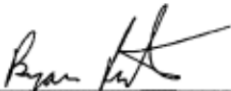
62. Attached here to as Exhibit 61 is a true and accurate copy of selected pages from Zimmer's First Set of Requests for Production served on June 6, 2005.
63. Attached here to as Exhibit 62 is a true and accurate copy of selected pages from the Declaration of Dr. Stephen Li, Ph.D filed in Support of Plaintiff's Opposition to Defendant's Motion For Summary Judgment Of Noninfringement and Invalidity of Claims 3, 6, 7, 10, 11 and 12 of U.S. Patent 6,818,020. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
64. Attached here to as Exhibit 63 is a true and accurate copy of selected pages from the Plaintiff Howmedica Osteonics Corporation's Memorandum of Law in Opposition to Defendant's Motion For Partial Summary Judgment Of Noninfringement of the U.S. Patent 6,818,020. This exhibit has been designated as containing Confidential Information under the Stipulated Protective Order in this case.
65. Attached here to as Exhibit 64 is a true and accurate copy of the February 22, 2007 Declaration of Shi-Shen Yau submitted in support of the prosecution of U.S. Patent Application No. 10/935,510.
66. Attached here to as Exhibit 65 is a true and accurate copy of the April 28, 2007 Notice of Allowability for U.S. Patent Application No. 10/935,510.
67. Attached here to as Exhibit 66 is a true and accurate copy of selected pages from Howmedica's Second Supplemental Responses To Zimmer's Interrogatory Nos. 3 and 6 and First Supplemental Response To Zimmer's Interrogatory No. 7 signed by Howmedica on October 16, 2006.

68. Attached here to as Exhibit 67 is a true and accurate copy of the Post-Judgment Declaration of Wayne A. Hoeberlein dated August 25, 2016.

69. Attached here to as Exhibit 68 is a true and accurate copy of the Declaration of Bryan S. Hales dated August 26, 2016.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct to the best of my knowledge.

Executed this 26th day of August, 2016, in Chicago, Illinois.

  
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Bryan C. Rutsch